

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 182 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF UMEDLAL AMARCHAND

Versus

BHATIA PRATAPSINH GOKALDAS

Appearance:

MR MS SHAH for the Petitioner

MR SUNIL B PARIKH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/08/2000

ORAL JUDGEMENT

This is tenant's revision under Section 29(2) of
the Bombay Rent Act against the judgement and decree
dated 5.1.1990 passed by the lower appellate Court
directing eviction of the revisionist from the demised

accommodation.

2 The brief facts giving rise to this revision are as under:-

3 The demised accommodation consisting of two rooms was let out to the deceased-tenant on monthly rent of Rs.20/-. He remained tenant for a period of more than 20 years. He died during the pendency of the suit whereupon his four legal representatives inherited tenancy and occupied two rooms as tenants. The landlord alleging reasonable and bona fide requirement for himself and for his family members filed suit for eviction of the deceased tenant after serving notice.

4 The suit was resisted by the deceased-tenant on the ground that the requirement of the landlord is neither bona fide nor genuine and that in case the decree for eviction is passed, the tenant would suffer greater hardships.

5 The suit was tried by the trial court which found that the requirement of the landlord was neither genuine nor bona fide. Still, the trial Court considered the question of comparative hardship and concluded that in case decree for eviction of the tenant is passed, greater hardship would be caused to the tenants.

6 Feeling aggrieved the landlord preferred an appeal which was allowed by incomplete finding recorded by the appellate Court. The appellate Court reversed the finding of the trial Court on the ground that the requirement of the landlord was not genuine and bona fide. However, it did not consider at all in its judgement who would suffer hardship in case decree for eviction is to be passed. As such, on such incomplete finding the judgement and decree of the trial Court was reversed by the lower appellate Court hence this revision.

7 I have heard Shri M.S. Shah learned counsel for the revisionist and Shri S.B. Parikh learned counsel for the respondent.

8 The decree of the lower appellate Court for eviction of the revisionist has been passed u/s 13(1)(g) of the Bombay Rent Act which provides that the landlord shall be entitled to recover possession of the premises if the Court is satisfied that the premises are reasonably and bona fide required by the landlord for occupation of himself or by any person for whose benefit

the premises are held (or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purpose of the trust).

9 Considering the evidence on record the trial Court found that the requirement of the landlord was neither genuine nor bona fide. However, the lower appellate Court did not agree with the findings recorded by the trial Court regarding genuine and reasonable as well as bona fide requirement of the landlord for residential accommodation for the purpose of his family members. However, that was not enough for granting the decree for eviction. Sub-section (2) of Section 13 of the Bombay Rent Act provides that no decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1) of Section 13 if the Court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant greater hardship would be caused by passing the decree than by refusing to pass it.

10 It is obvious that the lower appellate Court has totally overlooked the provisions of Section 13(2) of the Bombay Rent Act. Once it came to the conclusion that the requirement of the landlord was bona fide and genuine, it was obligatory for the lower appellate Court to consider the questions enumerated in Section 13(2) of the Bombay Rent Act. Without consideration of the comparative hardship, the decree for eviction could not be passed by the lower appellate Court even if it recorded a finding that the requirement of the landlord was genuine and bona fide.

11 It is difficult in this revision to record a finding on comparative hardship because this question was not at all considered by the lower appellate Court. Of course, the trial Court has considered this aspect of the matter but once the trial Court found that the need of the landlord was neither bona fide nor genuine, it was not obligatory for the trial Court to consider the next questions involved in Section 13(2) of the Bombay Rent Act. Consequently, it would be difficult in this revision to press in service the grounds taken by the trial Court while considering the question of hardship. Consequently, the proper course is to set aside the judgement and decree of the lower appellate Court and remand the appeal to the lower appellate Court for considering the question arising u/s 13(2) of the Bombay Rent Act and thereafter suitable judgement and decree in accordance with law shall be passed by the lower

appellate Court.

12 For the reasons stated above, the revision succeeds and is allowed. The judgement and decree of the lower appellate Court dated 5.1.1990 is set aside. Regular Civil Appeal No.285 of 1983 is remanded to the lower appellate Court, namely, Joint District Judge, Jamnagar, with a direction that it shall consider the question of comparative hardship in the light of Section 13 (2) of the Bombay Rent Act and shall record finding thereon after giving opportunity of hearing to the landlord and tenant on this aspect. Thereafter the appeal shall be decided afresh in accordance with law. This order of remand shall not be construed as acceptance or refusal to accept the finding of the lower appellate Court on genuine and bona fide requirement of the landlord.

13 Since the suit was filed in the year 1979 and the appeal was filed in the year 1983 and this revision was filed in the year 1990, it is directed that the lower appellate Court shall decide the appeal in the light of the directions given in the body of the judgement within a period of six months from the date of receipt of copy of this judgement.

14 This revision accordingly stands disposed of. No order as to costs.

(mohd)